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99 CENTS ONLY STORES LLC

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 MARIA ANTONIETA ESCOBAR-RIVERA,
14 an individual,

15 Plaintiff,

16 vs.

17 99 CENTS ONLY STORES, LLC a foreign
18 corporation; DOES I through X; and ROE
19 ENTITIES I through X,

20 Defendants.

CASE NO.:

21 **DEFENDANT, 99 CENTS STORE ONLY, LLC’ S NOTICE OF REMOVAL OF**
22 **ACTION TO UNITED STATES DISTRICT COURT UNDER 28 USC § 1441(a)**

23 Defendant, 99 CENTS ONLY STORES LLC, by its undersigned attorney, LEW
24 BRANDON, JR., ESQ., JEFFREY J. ORR, ESQ., and HOMERO GONZALEZ, ESQ., of
25 BRANDON | SMERBER LAW FIRM, hereby removes the above-captioned case to the United
26 States District Court, Clark County, Nevada, where the action is now pending, pursuant to 28
27 USC § 1441(a) and states as follows:
28

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1 1. The above-entitled action was commenced in the Eighth Judicial District Court,
2 Clark County, State of Nevada on September 9, 2022, bearing Case No. A-22-858173-C. The
3 action is now pending in the Eighth Judicial District Court, Clark County, State of Nevada.

4 2. Plaintiff filed her initial complaint on or about September 9, 2022. Plaintiff's
5 Complaint fails to state that this case is one which is or has become removable. *See Harris v.*
6 *Bankers Life & Cas. Co.*, 425 F.3d 689 (9th Cir. 2005). Defendant, 99 Cents Only Stores, LLC.
7 filed an Answer to the initial complaint on September 30, 2022.

8 3. Plaintiff filed a Request for Exemption from Arbitration on October 4, 2022,
9 citing past medical special damages in excess of \$204,647.67. This was Defendant's first
10 indication of this case involving an amount in controversy in excess of \$75,000.00.

11 4. This Notice of Removal was filed timely as it was filed within thirty (30) days of
12 service of Plaintiff's October 4, 2022, Request for Exemption from Arbitration, LLC, which was
13 the first motion, order or other paper from which it could first be ascertained that this case is one
14 which is or has become removable. *See* 28 U.S.C. 1446(b); *Harris*, 425 F.3d 689.

15 5. Pursuant to Fed. R. Civ. P. 6 (a), the last day of the thirty (30) day period set forth
16 under 28 U.S.C. 1446(b) is November 3, 2022. *See* 28 U.S.C. 1446(b), *Harris v. Bankers Life &*
17 *Cas. Co.*, 425 F.3d 689 (9th Cir. 2005).

18 6. This action concerns Plaintiff's Complaint, in which she alleged one cause of
19 action: Negligence.

20 7. At the commencement of this action and at the time of the filing of this Notice of
21 Removal, Plaintiff, MARIA ANTONIETA ESCOBAR-RIVERA was, and now is, a citizen of
22 the County of Clark, State of Nevada.

23 8. At the commencement of this action and at all times herein, Defendant, 99
24 CENTS ONLY STORES, LLC, was, and now is, a limited liability company duly organized and
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existing under the laws of the County of Los Angeles, State of California with its principal place of business in California, and therefore, is a citizen of the State of California.

9. A limited liability company is a citizen of every state in which its members are citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Where removal from state to federal court is at issue, the party seeking removal “bears the burden of establishing federal jurisdiction” *Naffe v. Frey*, 789 F.3d 1030, 1040 (9th Cir. 2015).

10. Here, 99 CENTS ONLY STORES, LLC.’ sole member is NUMBER HOLDINGS, INC., a Delaware Corporation. NUMBER HOLDINGS, INC. is organized under the laws of the State of Delaware with its principal place of business in Los Angeles County, California. In short, Defendant 99 CENTS ONLY STORES, LLC is an entity that has its principal place of business in Los Angeles County, California, and NUMBER HOLDINGS, INC., is organized under the laws of the State of Delaware with its principal place of business in Los Angeles County, California. . *Id.* Thus, for purposes of diversity analysis, 99 CENTS ONLY STORES, LLC and NUMBER HOLDINGS, INC., are citizens of California and Delaware.

11. Upon information and belief, Plaintiff’s past medical special damages are two hundred four thousand, six hundred forty-seven dollars & 67/100 (\$204,647.67) with an undetermined amount of other damages. As a result, the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00).

12. The United States District Court for the District of Nevada has original jurisdiction pursuant to 28 U.S.C. § 1332 in that the parties are citizens of different States and the amount in controversy exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00) exclusive of interests and costs.

13. Accordingly, Plaintiff’s Complaint is removed pursuant to 28 U.S.C. 1441, which provides that a defendant may remove a case over which the federal court has original jurisdiction.

WHEREFORE, Defendant, 99 CENTS ONLY STORES LLC, a California limited liability company respectfully requests that this action proceed in the United States District Court for the District of Nevada as an action properly removed to it under the diversity of citizenship statute.

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that on October 10, 2022, I served the foregoing
DEFENDANT, 99 CENTS STORE ONLY, LLC' S NOTICE OF REMOVAL OF ACTION
TO UNITED STATES DISTRICT COURT UNDER 28 USC § 1441(a) via the Court's
electronic filing and service systems to all parties on the current service list.

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An Employee of BRANDON | SMERBER LAW FIRM